

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

Manchester Farms, Inc.

Plaintiff,

v.

Quail International, Inc., and Supremas, Inc
f/d/b/a Cal Western Beef.

Defendants.

Civil Action No. 3:14-cv-44

COMPLAINT
(Jury Trial Demanded)

Plaintiff Manchester Farms, Inc., (“Manchester Farms”) complains against Defendants Quail International, Inc., (“Quail International”) and Supremas, Inc., which formerly did business as Cal Western Beef (“Supremas”) as follows:

PARTIES, JURISDICTION and VENUE

1. Manchester Farms, Inc. is a corporation organized and existing pursuant to the laws of the State of South Carolina and maintains its principal place of business in South Carolina.

2. Quail International is a corporation organized and existing pursuant to the laws of the State of Georgia and maintains its principal place of business in Georgia.

3. Supremas is a corporation organized and existing pursuant to the laws of the State of California and maintains its principal place of business in California.

4. Subject matter jurisdiction is proper pursuant to 28 U.S.C. §§ 1331, 1332, 1338 & 1367 and 15 U.S.C. § 1121.

5. This Court has power to exercise personal jurisdiction over the defendants, and venue is proper pursuant to 28 U.S.C. § 1391(b)(2) in this judicial district.

FACTS

6. Manchester Farms raises, processes, packages, and distributes high-quality quail.

7. Quail International raises, processes, packages, and distributes quail.

8. Supremas is a wholesale food products distributor who purchases and sells quail, among other food products, in the western United States. Supremas formerly did business as Cal Western Beef.

9. GS1 is an international nonprofit association which develops supply chain industry standards including standards for GS1 barcodes and identification keys, including Universal Product Codes.

10. The Universal Product Code (“UPC”) is a method for identifying specific products and is widely used in the United States and other countries. A UPC usually consists of a scannable strip of black bars and white spaces, known as a barcode, above a sequence of numbers, which are the UPC. The barcode was developed to quickly provide UPC information by using a scanner. In most cases, the UPC consists of a company prefix, which is a sequence of numbers associated with only one company and registered with GS1, and an item number, chosen by the holder of the company prefix. Additionally, a check digit is assigned automatically by a check digit calculator.

11. In 1975, Manchester Farms registered the numerical sequence “072564” to use as its company prefix on UPC barcodes placed on its products. The Certificate of Registration is attached hereto as Exhibit A.

12. Upon information and belief, Quail International registered the numerical sequence “045142” with GS1 to use as its UPC company prefix.

13. Upon information and belief, Supremas registered the numerical sequence “085466” with GS1 to use as its UPC company prefix.

14. In or about October of 1997, Manchester Farms began selling its quail products to Supremas, then known as Cal Western Beef, in packages containing four quail (“four packs”) with a label bearing UPC number 072564 531962. The sequence “072564” is Manchester Farms’ exclusive, registered company prefix, and the sequence “53196” is an item number which identifies the product as a four pack of quail Manchester Farms produced and sold to Supremas for further distribution. The final “2” is an automatically assigned check digit. A true and correct copy of the label placed on each four pack of quail is depicted below:



15. In about November of 1998, Supremas stopped purchasing quail from Manchester Farms.

16. Upon information and belief, sometime in 1998, Supremas began purchasing quail from Quail International.

17. Manchester Farms has established an industry reputation for high-quality quail. Manchester Farms is the only SQF Level 2 certified quail producer in the United States and possibly the world. “SQF” stands for Safe Quality Food, which is an organization dedicated to food safety.

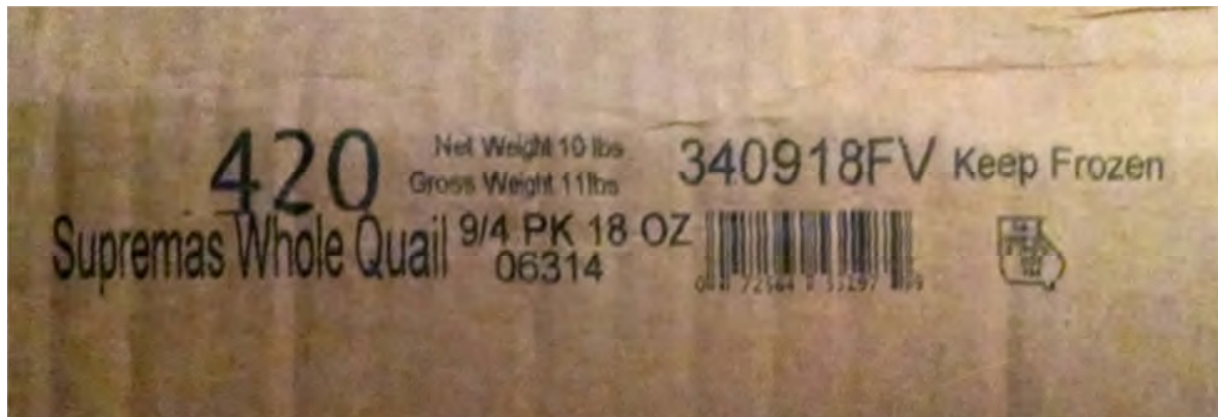
18. Upon information and belief, Quail International’s quail products are of lower quality.

19. Upon information and belief, the quail Supremas purchased from Quail International were packaged by Quail International in four packs displaying UPC number 072564 531962 and the corresponding barcode (the “accused quail”). A true and correct photograph of the label placed on the accused quail by Quail International is depicted below:



20. Defendant Quail International packaged the accused quail in master cases, each of which contained nine (9) packs of the accused quail. The master case was labeled with UPC

number 072564 531979. A true and correct photograph of a master case in which Defendant Quail International packaged the accused quail is depicted below:



21. Defendants do not have permission to use Manchester Farms' UPC company prefix, UPC number 072564 531962, or UPC number 072564 531979 in connection with the sale or offering for sale of quail produced by Quail International.

22. Plaintiff did not find out about Defendants use of Manchester Farms UPC company prefix until very recently, when a large national retailer contacted Manchester Farms as a result of its mistaken belief that Manchester Farms raised and processed the accused quail.

23. Because the accused quail is sold under UPC numbers associated with Plaintiff, Defendant Supremas, Inc.'s customers have reason to believe Plaintiff produced the accused quail.

24. Upon information and belief, Defendant Supremas, Inc.'s customers purchased the offending quail from Supremas, Inc. based, at least in part, on the mistaken belief that Plaintiff, rather than Defendant Quail International, produced the accused quail.

25. Upon information and belief, Defendant Supremas, Inc. would not have sold the accused quail if the UPC had not identified Plaintiff as the supplier of the quail.

26. Upon information and belief, Defendants use of Plaintiff's UPC company prefix, UPC number 072564 531962, and UPC number 072564 531979 in connection with the sale and offering for sale of the accused quail was reckless, intentional, willful, and/or deliberate.

27. Upon information and belief, retail sales of the accused quail have exceeded \$2,250,000 in the last five years.

COUNT I – UNFAIR COMPETITION & FALSE DESIGNATION OF ORIGIN
(All Defendants)
(15 U.S.C. § 1125 & O.C.G.A § 23-2-55)

28. Manchester Farms incorporates all preceding paragraphs as if stated here verbatim.

29. Manchester Farms' registered UPC company prefix of "072564" is used in industry commerce to identify Manchester Farms' products.

30. UPC number 072564 531962 is used in commerce to identify a four pack of quail produced by Manchester Farms and distributed by Defendant Supremas, Inc.

31. Defendants use of UPC number 072564 531962 on the labels for the accused quail falsely suggests that Manchester Farms is the producer of the accused quail when, in reality, Defendant Quail International produces the accused quail.

32. Defendants are experienced participants in the business of supply chain distribution of quail products, have registered UPC company prefixes, and know that a UPC company prefix is used in commerce to identify the source of goods.

33. Defendants' use of Manchester Farms UPC company prefix can only be for the purpose of misleading customers as to the origin of the accused quail.

34. Defendants' label appears very similar to the label under which Manchester Farms sold quail to Defendant Supremas, Inc. Upon information and belief, Defendants intended

for this label to be very similar to the label under which Manchester Farms sold Defendant Supremas quail to further Defendants' intentional passing off of the accused quail as if it had been produced by Manchester Farms.

35. Manchester Farms has an exclusive, registered UPC prefix which Defendants had no right to use on products which were not produced by Manchester Farms.

36. Upon information and belief, Defendants' created and used UPC number 072564 531979 on the master cases of the accused quail to further their purpose of deceiving Supremas' customers into believing they were purchasing high-quality quail products produced by Manchester Farms.

37. Defendants' use of Manchester Farms' UPC company prefix, and the other conduct alleged herein, constitutes unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125, and O.G.C.A. § 23-2-55.

38. Defendants' acts of unfair competition described herein have caused and continue to cause Manchester Farms' substantial injury for which Manchester Farms has no adequate remedy at law and constitute attempts to encroach upon the business of Manchester Farms by the use of similar trademarks, names, or devices with the intention of deceiving and misleading the public.

39. Defendants' misconduct was intentional, reckless, willful and/or deliberate and gained them profits while causing damage to Manchester Farms who, pursuant to 15 U.S.C. §§ 1116 & 1117 and/or O.G.C.A. § 23-2-55, is entitled to actual damages, treble damages, the defendants' profits arising from their misconduct, enhanced profits and damages, attorney fees, costs, and injunctive relief.

COUNT II – UNFAIR AND DECEPTIVE TRADE PRACTICES

(All Defendants)
(O.G.C.A. § 10-1-370)

40. Manchester Farms incorporates all preceding paragraphs as if stated here verbatim.

41. Defendants' use of UPC company prefix 072564, UPC number 072564 531962, and UPC number 072564 531979 constitute unfair and deceptive acts or practices in the marketplace in violation of O.G.C.A. § 10-1-370 *et seq.*

42. Defendants' acts were and continue to be intentional, willful and deliberate.

43. Manchester Farms has no adequate remedy at law and is entitled to injunctive relief in addition to actual damages, treble damages, exemplary damages, attorney fees, costs, and other expenses.

COUNT III – UNJUST ENRICHMENT

(All Defendants)

44. Manchester Farms incorporates all preceding paragraphs as if stated here verbatim.

45. Defendants' profits from their conduct alleged herein gained them unjust profits which, in fairness, should be awarded to Manchester Farms.

COUNT IV – CIVIL CONSPIRACY

(All Defendants)

46. Manchester Farms incorporates all preceding paragraphs as if stated here verbatim.

47. Defendants came to a mutual understanding and agreement to accomplish the unlawful act representing the accused quail to have been produced by Manchester Farms.

48. Defendants intended to profit from their unlawful acts and also to harm Manchester Farms. As a result, Manchester Farms suffered special damages in the form of damage to reputation and lost profits and is therefore entitled to damages and punitive damages arising from Defendants' conspiracy.

COUNT VI - LIBEL
(All Defendants)

49. Manchester Farms incorporates all preceding paragraphs as if stated here verbatim.

50. Defendants' use of UPC numbers that falsely identified Manchester Farms as the producer of the accused quail is a false representation to Supremas customers for which the defendants were and are not privileged to publish and which the defendants did publish with actual malice.

51. Upon information and belief, consumers of the accused quail have not been satisfied with the product which they believe was produced by Manchester Farms and, as a result, Manchester Farms' reputation has been damaged.

52. Defendants' publication of false representations was negligent, grossly negligent, reckless, willful and/or intentionally made such that Manchester Farms is entitled to special damages, presumed damages and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Manchester Farms prays for judgment as set forth in this complaint to include, without limitation, compensatory damages, the defendants' profits gained from the events alleged herein, enhanced damages, treble damages, special damages, presumed damages, punitive damages, attorney fees, costs, injunctive relief and such other relief as this Court deems just and proper.

Respectfully submitted this 16th day of May, 2014.

TURNER PADGET GRAHAM & LANEY, PA

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(Pro Hac Vice application forthcoming)